UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

July 14, 2000

MEMORANDUM

SUBJECT: Response to the OIG Audit "Superfund Sites Deferred to RCRA"

FROM: Timothy Fields, Jr. ***/s/ Tim Fields***
Assistant Administrator

TO: Superfund National Policy Managers
RCRA Senior Policy Managers

PURPOSE:

The purpose of this memorandum is to request your assistance in responding to a recent Office of Inspector General (OIG) audit, "Superfund Sites Deferred to RCRA" (E1SFF8-11-0006-9100116, March 31, 1999). The Office of Solid Waste and Emergency Response (OSWER) is required to report progress on the reevaluation of the audit universe, and document changes the Regions have made to ensure appropriate coordination between the RCRA and Superfund programs in deferring sites/facilities.

BACKGROUND:

On March 31, 1999, the OIG released an audit report entitled "Superfund Sites Deferred to RCRA," which assessed EPA's implementation of its RCRA deferral policy. Under this policy, EPA defers eligible Superfund sites to the RCRA Corrective Action program according to specific criteria. The OIG concluded that, out of nearly 3,000 sites deferred to RCRA, a large portion did not meet deferral criteria and were therefore inappropriately deferred. Furthermore, the audit found inadequate coordination between the RCRA and Superfund programs to be the cause of many inappropriate deferrals. In response to that audit report, our offices issued OSWER Directive 9200.1-31P, "Interim Guidance in Response to the OIG Audit 'Superfund Sites Deferred to RCRA'" in December, 1999.

Among a number of specific recommendations, the OIG recommended that OSWER reevaluate all of the deferred sites not in the RCRA corrective action workload to determine the

best legal authority to address the sites, identify any necessary response actions, and improve communication between Superfund and RCRA program officials. Regarding the last recommendation, the OIG concluded that a lack of communication between program staff resulted in the inappropriate deferral of a large number of sites.

IMPLEMENTATION:

Documentation that OSWER and the Regions are addressing the OIG's recommendations is an important aspect of tracking our progress in followup to this audit. By the end of FY2000, the two programs should reach agreement on which program will take responsibility for each of the sites/facilities needing reviews. Consistent with the December 1999 interim guidance, these agreements should be documented in site files by both programs, as well as in the CERCLIS database. Important changes to CERCLIS will be released in coming weeks which will allow the Regions to indicate whether each site will remain under the RCRA Corrective Action program or return to Superfund for further response. Upon release of the CERCLIS changes, the Regions will be required to enter data on all reassessment decisions at the audit sites. OSWER will then begin to routinely pull data from CERCLIS to report assessment progress and completions to the OIG.

OSWER is also required to report on what each Region is specifically doing to address the need for improved communication and collaboration between the Superfund and RCRA Corrective Action programs. As stated in the December 1999 interim guidance responding to the OIG audit:

> [A]ny decision to defer a site will now require written notification to the receiving program. The receiving program will then review its information on the site, as well as information supplied by the deferring program, prior to confirming that the site is appropriate for deferral. The receiving program must then notify the deferring program of its conclusion, in writing, and update each information system as appropriate. The site has not been officially deferred until the receiving program submits written acceptance of the site. . . . Headquarters recommends that each program designate a site deferral coordinator as the point of contact for working with future sites.

Consistent with the above direction, this memorandum provides example documentation of an agreement to refer a site from the RCRA GPRA Baseline list to another Federal program (see Attachment I). Regional program officials should follow the general format of this example, providing additional rationale and/or explanation of the deferral decision in order to ensure appropriate documentation of each individual deferral agreement.

In order to document for the OIG the programs' response to the recommendations concerning coordination between offices, you are requested to describe the specific actions your Region is taking. You should identify the Region's deferral coordinators in each program, describe the approval process, and provide written assurance that all deferral decisions are being accompanied by a written acceptance of the site from the receiving office. Please provide your

response in the form of a memorandum by August 11, 2000.

If you or your staff have any questions, please contact Jennifer Griesert, Office of Emergency and Remedial Response, at (703) 603-8888 or Henry Schuver , Office of Solid Waste, at (703) 308-8656 .

Attachments

cc: Mike Shapiro, OSWER, 5101
Stephen Luftig, OSWER, 5101
Larry Reed, OERR, 5201G
Elizabeth Cotsworth, OSW, 5301W
RCRA Branch Chiefs/Key Contacts, Regions I-X
Superfund Site Assessment Contacts, Regions I-X
Bob Cianciarulo, Region I
OERR Site Assessment Team

Attachment I: Example Referral Agreement Documentation

Entire-Facility Referral Documentation

RCRA to Non-RCRA Federal Authority

The facility currently known as _____

with EPA ID# _____, located at _____,

_____, _____ County, in the state of _____,

is, and remains, a facility subject to RCRA Corrective Action (CA).

However, the RCRA program and _____ (a Non-RCRA Federal Authority) have determined it is most advantageous that the Non-RCRA Federal Authority address the Corrective Action responsibilities at this facility. Because the Non-RCRA Federal Authority has taken responsibility for the cleanup of this entire facility, the Non-RCRA Federal Authority will be tracking their progress under their (e.g., GPRA) measures, and the facility will no longer be tracked on the RCRA CA program's GPRA Baseline or measures.

_____
Branch Chief (or equivalent) Date _____
RCRA CA Program, Region ___

_____
Branch Chief (or equivalent) Date _____

_____
(Non-RCRA Federal Authority)
Region ___

Source: Appendix II to "Request for comments on the Draft-Final GPRA Baseline Facilities List for Corrective Action," from Stephen F. Heare, Acting Director, Permits and State Programs Division, OSW (July 31, 1998)